IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1808 OF 2002

Ashok Kumar Jalan. ...
Petitioner.
Versus
Elphinstone Mills Staff Co-op.Credit
Society Ltd. & Ors. ...Respondents.

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Mr. H.N. Thakore for the Petitioner.
Mr. S.Z. Choudhary for Respondent No.1.
Ms.Rekha Tawade for Respondent No.2.
Mr.Milind More, AGP for Respondent Nos.3, 4 and 5.

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CORAM : DR. D.Y. CHANDRACHUD, J.

May 2, 2005.

P.C.:

Rule, by consent returnable forthwith. Counsel appearing on behalf of the Respondents waives service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. This petition is directed against an order of the Divisional Joint Registrar of Co-operative Societies dated 9th October 2000 by which an order passed by the Deputy Registrar of Co-operative Societies under Section 49 of the Maharashtra Co-operative Societies' Act, 1960, has been confirmed. The textile undertaking of Elphinstone Spinning and Weaving Mills Co. Ltd., was taken over by the Government of India under the Sick Textile Undertakings (Taking Over of Management) Ordinance which was promulgated by the President of India on 18th October 1983. The Central Government, upon the take over of the undertaking, appointed the National Textile Corporation Ltd. (NTC) as the custodian. It is common ground, that the National Textile Corporation (South Maharashtra) Ltd., which is a subsidiary of NTC has been appointed as the custodian of the Textile Undertaking. In 1995, Parliament enacted the Textile Undertakings (Nationalization) Act, 1995. In pursuance of the provisions of Section 3(1) of the Act, on and from the appointed day, the right, title and interest of the owner in relation to every textile undertaking stands transferred to and vests absolutely in the Central Government. One

of the undertakings which has been acquired is the Elphinstone Spinning and Weaving Mills Co.Ltd., situated at Elphinstone Road, Mumbai. The First Schedule to the Act inter alia contains the name of the owner of the aforesaid textile undertaking as The Elphinstone Spinning and Weaving Mills Co.Ltd. Section 5(1) of the Act provides that every liability, other than a liability specified in sub-section (2), of the owner of a textile undertaking, in relation to the textile undertaking in respect of any period prior to the appointed day, shall be the liability of such owner and shall be enforceable against him and not against the Central Government or the National Textile Corporation.

3. The First Respondent is a credit society deemed to be registered under the Maharashtra Co-operative Societies' Act, 1960. The society was formed in 1944 by the workers of Elphinstone Spinning and Weaving Mills Co.Ltd. According to the First Respondent, the membership fee, share capital, monthly savings and reimbursement of loan installments were directly deducted by the

employer from the emoluments of member-workers and paid over to the Credit Society in accordance with the provisions of Section 49 the Maharashtra Co-operative Societies' Act, 1960. The grievance of the First Respondent is that from about 1979, though amounts were deduced from the salaries of the workers who were members of the Society, these amounts were not paid over to the First Respondent. As on 31st March 1994, the total amount that was due and payable worked out to Rs.6,76,984.95. An application was filed before the Deputy Registrar of Co-operative Societies for the recovery of the aforesaid amount on 4th May 1994.

4. The Petitioner filed his reply to the application in which it was stated that the textile strike of 18th January 1982 resulted in crippling the financial position of the entire textile industry. It was averred that the Company would have paid the dues of the Society, but in the meantime, the management of the textile undertaking was taken over by the Central Government on 18th October 1983. The Petitioner stated that monies which were deducted from the

wages/salaries of the employees have been retained in the Mill and are reflected in the assets of the Mill. The Petitioner denied the allegation that he had utilised any part of the amount for his own purposes and in so far as is material, it was stated that there is no provision of law under which he could be held personally liable for the amount. NTC filed its Written Statement in which it contended that the liabilities related to the period prior to the take over on 18th October 1983 and it was the erstwhile Company which as the owner of the undertaking had failed to pay the dues.

5. The application filed by the First Respondent was allowed by the Deputy Registrar of Co-operative Societies. The Petitioner preferred a revision before the Divisional Joint Registrar which has been dismissed by the impugned order dated 9th October 2000.

6. Counsel appearing on behalf of the Petitioner has confined the challenge to the impugned order in so far as it foists a liability personally upon the Petitioner.

7. The Petitioner was a Director of Elphinstone Spinning and Weaving Mills Co.Ltd., and at the material time held the office of Managing Director. Section 2(g) of the Textile Undertakings (Nationalization) Act, 1995 defines the expression “owner” as follows :

> “(g) “owner”, when used in relation to a textile undertaking, means any person or firm whom or which is, immediately before the appointed day, the immediate proprietor or lessee or occupier of the textile undertaking or any part thereof, and in the case of a textile company which is being wound up or the business whereof is being carried on by a liquidator or receiver, includes such liquidator or receiver, and also includes any agent or manager of such owner but does not include any person or body of persons authorised under the Textile Undertakings (Taking Over of Management) act, 1983 or under the Laxmirattan and Atherton West Cotton Mills (Taking Over of Management) Act, 1976 to take over the management of the whole or any

part of the textile undertaking."

Section 2(l) defines "textile company" as a Company specified in column (3) of the First Schedule as owning the textile undertaking specified in the corresponding entry in column (2) of the First Schedule. Section 2(m) defines the expression "textile undertaking" as an undertaking specified in column (2) of the First Schedule, the management of which was, before the appointed day, taken over by the Central Government under the Textile Undertakings (Taking Over of Management) Act, 1983. In so far as the present case is concerned, the First Schedule defines the name of the Textile undertaking in Entry (1) as Elphinstone Spinning and Weaving Mills and the name of the owner as Elphinstone Spinning and Weaving Mills Co.Ltd. The liability under Section 5(1) for the period prior to the appointed day (1st April 1994) is that of the owner by virtue of Section 5(1). Section 2(g) defines the expression "owner" to mean a person or a firm which was before the appointed day, the immediate proprietor, lessee or occupier of the textile undertaking. It also

includes any agent or manager of the owner. In the present case, it is common ground, that the Petitioner was a Director of the Company. Elphinstone Spinning and Weaving Mills Co.Ltd. was a juristic entity incorporated under the provisions of the Companies Act, 1913. In these circumstances, the liability in respect of the dues which were deducted from the salaries of the workers on account of the Co-operative Credit Society is the liability of the Company. That liability is capable of being enforced and has to be enforced against the assets of the Company. The Petitioner is not the owner of the Company within the meaning of Section 2(g).

8. In these circumstances, this petition has to be allowed and is accordingly allowed. The impugned order of the Divisional Joint Registrar is set aside to the limited extent of its operation against the Petitioner. However, it is clarified that this order shall not be construed to affect the entitlement of the First Respondent to enforce the impugned order against the Company which was the owner of the textile undertaking. The petition shall accordingly stand disposed of.

There shall be no order as to costs.

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